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IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

RICHARD P. WELLS, For Himself  
And In His Representative Capacity  
As Administrator of the Estate of  
Marilyn Wells, Decedent, and As  
Guardian of His Minor Children,

Plaintiff,

vs.

CALIFORNIA PHYSICIANS'  
SERVICE, dba BLUE SHIELD OF  
CALIFORNIA,

Defendants.

Case No. C 05 1229 CRB

**STIPULATION AND ~~PROPOSED~~ ORDER CONTINUING  
SETTLEMENT CONFERENCE**

**Settlement Conference:**

Date: November 28, 2006

Time: 9:30 a.m.

Place: Courtroom A

1 IT IS HEREBY STIPULATED by and between plaintiff Richard P. Wells, in  
2 his individual capacity, as administrator of the Estate of Marilyn Wells, decedent,  
3 and as guardian of his minor children ("Plaintiff") and defendant California  
4 Physicians' Service, dba Blue Shield of California's ("Blue Shield"), through their  
5 respective counsel of record, as follows:

6 WHEREAS, a Settlement Conference in the above-captioned matter is  
7 currently scheduled for 9:30 a.m. on November 28, 2006;

8 WHEREAS, all parties and their counsel participated in a Case Management  
9 Conference in this matter before Magistrate Judge Charles R. Bryer on October 20,  
10 2006;

11 WHEREAS, on October 17, 2006, the Ninth Circuit Court of Appeals issued  
12 an opinion in *Glanton v. Advancepcs, Inc.*, 2006 DJDAR 13934, which addressed,  
13 among other things, the question of whether an ERISA plan participant who has  
14 suffered no judicially cognizable injury may maintain an action against the plan's  
15 fiduciaries for injunctive relief under ERISA;

16 WHEREAS, Defendant believes the holding in *Glanton* may be dispositive  
17 of Plaintiff's remaining claims in this action;

18 WHEREAS, the Court at the October 20, 2006 Case Management  
19 Conference continued all pending dates to permit Blue Shield to bring a motion for  
20 summary judgment under *Glanton* once that opinion becomes final;

21 WHEREAS, Blue Shield intends to file a motion for summary judgment on  
22 or about December 1, 2006;

23 WHEREAS, Blue Shield's motion for summary judgment will not be heard  
24 until January 2007; and

25 WHEREAS, the parties will not be able to participate in a meaningful  
26 continued settlement conference until the Court has ruled on the applicability of  
27 *Glanton* to this action,

1 NOW, THEREFORE, and based upon the above recitals, it is hereby agreed  
2 and stipulated by the parties hereto, through their respective attorneys of record,  
3 that:

4 1. The Settlement Conference presently scheduled for 9:30 a.m. on  
5 November 28, 2006 is continued to 9:30 a.m. on February 6, 2007.

6 IT IS SO STIPULATED.

7 MANATT, PHELPS & PHILLIPS, LLP  
8 GREGORY N. PIMSTONE  
9 ADAM PINES  
10 TRAVIS A. CORDER

11 Dated: November 17, 2006

By: s/ Adam Pines  
Adam Pines  
Attorneys for Defendant  
CALIFORNIA PHYSICIANS' SERVICE,  
dba BLUE SHIELD OF CALIFORNIA

13 BENJAMIN FRANKLIN LEGAL  
14 FOUNDATION

15 Dated: November 17, 2006

By: s/ James B. Rhoads  
James B. Rhoads  
Attorney for Plaintiff  
RICHARD P. WELLS

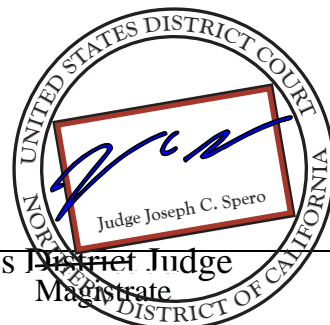
17 *Filer's Attestation: Pursuant to General Order No. 45, Section X(B) regarding*  
18 *signatures, Adam Pines hereby attests that concurrence in the filing of this*  
19 *document has been obtained.*

20 **ORDER**

21 IT IS SO ORDERED.

22 Date: 11/27/06

23 United States District Judge  
24 Magistrate



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